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 Defendants and Cross-Complainants
 Marc Antoine Gagnon and Meggie Roy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SARAH GAGAN, an individual, CLAIRE
 GAGAN, an individual, HALO'S HEART,
 LLC, a California Limited Liability Company

Plaintiff,

v.

MARC ANTOINE GAGNON, an individual,
 MEGGIE ROY, an individual, MARIEVE
 SIMARD, an individual, ALAIN POIRIER, an
 individual, and DOES 1-280, inclusive,

Defendants.

MARC ANTOINE GAGNON, an
 individual; MEGGIE ROY, an individual
 and Roes 1-10, inclusive,

Cross-Complainants

v.
 SARAH GAGAN, an individual;
 CLAIRE GAGAN, an individual,
 HALO'S HEART, LLC, a California
 limited liability company, and Roes 1-10,
 inclusive,

Cross-Defendants.

Case No.: 5:22-cv-00680-SSS-SP
The Hon. Sunshine S. Sykes

**DEFENDANT/CROSS-
 COMPLAINANT MEGGIE
 ROY'S OPPOSITION TO
 PLAINTIFFS' 12(b)(6) MOTION
 TO DISMISS THE 11th CLAIM
 FOR INTENTIONAL
 INFLECTION OF EMOTIONAL
 DISTRESS IN THE FIRST
 AMENDED CROSS-COMPLAINT**

Date: March 3, 2023
 Time: 2:00 p.m.
 Dept: Courtroom 2 of George E.
 Brown Jr. Federal Building

1 Defendant/Cross-Complainant Meggie Roy hereby submits this opposition to
 2 the 12(b)(6) motion by Plaintiffs to dismiss her intentional infliction of emotional
 3 distress count claim in the First Amended Cross-Complaint (“FACC”).
 4

5 **STATEMENT OF PERTINENT FACTS**

6 Meggie Roy (“Meggie”) has alleged in the 11th count of the FACC that both
 7 Plaintiffs Sarah Gagan and Claire Gagan deliberately and falsely told her that her
 8 husband – Defendant Marc Gagan (“Marc”) – was planning on killing himself and
 9 was out of the country on a “goodbye” tour to say his final farewells to friends and
 10 family before committing suicide. Such statements were entirely false and invented
 11 by Plaintiffs for the sole purpose of hurting Meggie, who of course never even
 12 considered the idea her husband was planning to kill himself. Plaintiffs’ statements
 13 were intended to and did cause Meggie emotional distress, fright and panic. (Dkt 63
 14 at 34-35, Paragraphs 298-299).

15 Meggie has pled, and the court must accept as true, that Marc and Meggie
 16 had a conversation with both Plaintiffs in July of 2021 about the fact that they were
 17 tired and were not getting any breaks from their dual roles as every-day unpaid
 18 managers for Plaintiffs. (*Id.*, Paragraph 296). Meggie pled that both Plaintiffs
 19 yelled at Marc and Meggie, calling them ungrateful and ridiculing them for
 20 claiming to be exhausted. It was an unpleasant meeting and Meggie and Marc were
 21 very upset as they had never been treated by Plaintiffs like that before. (*Ibid.*)

22 The relationship between Plaintiffs and Meggie and Marc deteriorated after
 23 that point. (*Id.* at Paragraph 297). Less than a month later, while Marc was in
 24 Canada, Plaintiffs were sitting at the kitchen table with Meggie. Out of nowhere,
 25 Sarah told Meggie in a cold and callous manner that Marc was going to kill himself
 26 while he was in Canada. (*Id.* at Paragraph 298). When Meggie, horrified, said that
 27 Marc would never do such a thing, Claire said equally coldly and callously, “Are
 28

1 you sure?" After reducing Meggie to almost the point of tears, Plaintiffs left her
2 alone in the room. (*Ibid*).

3 Plaintiffs knew that Meggie had an anxiety disorder. (*Id.* at Paragraph 338).
4 Plaintiffs deliberately went out of their way to tell Meggie these lies in order to
5 terrify her and cause her to suffer. They succeeded. Meggie was frantic, thinking
6 that her husband was going to kill himself during the two weeks that he was
7 Canada. Meggie suffered severe emotional distress, including the resumption of
8 serious migraines that required medication and visits to a neurologist. (*Id.* at 299).¹
9 Plaintiffs knew that Meggie had an anxiety disorder and they capitalized on that
10 vulnerability to try to inflict as much harm as possible in a twisted act of deliberate
11 cruelty. Nonetheless, they argue that their reprehensible acts outlined in the First
12 Amended Cross-Complaint – which this court must assume are true for the purposes
13 of Plaintiffs' motion -- do not rise to the level of intentional infliction of emotional
14 distress, but were merely akin to an insult, annoyance or petty oppression. They are
15 incorrect.

16 As consideration of such claims is fact-specific, this court must look to the
17 allegations in the FACC as a whole to determine whether the allegations in the 11th
18 claim for relief past muster. As discussed below, the allegations of intentional
19 infliction of emotional distress – deliberately telling a wife with an anxiety disorder
20 that her husband was going to kill himself while he was away from his wife and in
21 another country– are so repugnant and revolting that no average person would
22 tolerate such behavior.

25 ¹ While not pled explicitly, the physical manifestations of Meggie's
26 emotional distress, ie. the resumption of serious migraines, continues. She still is
27 consulting a neurologist. Such facts can be pled if the court grants her leave to
28 amend with respect to the motion to strike.

LEGAL ARGUMENT

I.

MEGGIE HAS MET HER BURDEN OF ALLEGING SUFFICIENT FACTS TO SUPPORT HER 11TH CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

Under California law, to state a cause of action for intentional infliction of emotional distress, a plaintiff must allege: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability, of causing emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the defendant's outrageous conduct was the actual and proximate causation of the emotional distress. (Cervantez v. J. C. Penney Co. (1979) 24 Cal. 3d 579, 593, superseded by statute on different grounds as stated in Melendez v. City of Los Angeles (1998) 63 Cal.App,4th 1, 7). “Generally, conduct will be found to be actionable where the recitation of the facts to an average number of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous!” (KOVR-TV, Inc. v. Sup. Ct., (1995) 31 Cal. App. 4th 1023, 1028, citing Restatement (Second) of Torts § 46 (1965)).

A complaint need contain only “a short and plain statement of the claim showing that the pleader is entitled to relief”(Federal Rules of Civil Procedure Rule 8(a)(2)), and such short and plain statement of the facts “must contain sufficient factual matter ... to ‘state a claim to relief that is plausible on its face.’ “ (Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

Determining whether a complaint will survive a motion to dismiss for failure to state a claim is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” (Id. at 679). In making this

1 context-specific evaluation, the court must construe the complaint in the light most
 2 favorable to the plaintiff and accept as true the factual allegations of the complaint
 3 (Erickson v. Pardus, 551 U.S. 89, 93–94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)),
 4 as well as any reasonable inferences to be drawn from them. (See Doe v. United
 5 States, 419 F.3d 1058, 1062 (9th Cir. 2005)).

6 A cause of action for intentional infliction of emotional distress must allege
 7 facts showing outrageous conduct which is intentional or reckless and which is
 8 outside the bounds of decency. It has been said in summarizing the cases discussing
 9 intentional infliction of emotional distress that ‘the rule which seems to have
 10 emerged is that there is liability for conduct exceeding all bounds usually tolerated
 11 by decent society, of a nature which is especially calculated to cause, and does
 12 cause, mental distress of a very serious kind.’ (Christensen v. Superior Court (1991)
 13 54 Cal.3d 868, 904–905)(citations omitted)). “Manifestly, the standard for judging
 14 outrageous conduct does not provide a ‘bright line’ rigidly separating that which is
 15 actionable from that which is not. Indeed, its generality hazards a case-by-case
 16 appraisal of conduct filtered through the prism of the appraiser's values, sensitivity
 17 threshold, and standards of civility. The process evoked by the test appears to be
 18 more intuitive than analytical...” (Yurick v. Superior Court (1989) 209 Cal.App.3d
 19 1116, 1128).

20 The fact that a defendant knew the plaintiff had a special susceptibility to
 21 emotional distress is a factor which may be considered in determining whether the
 22 alleged conduct was outrageous. (Angie M. v. Superior Court (1995) 37
 23 Cal.App.4th 1217, 1226). Furthermore, the extreme and outrageous character of the
 24 conduct may arise from an abuse by the actor of a position, or a relation with the
 25 other, which gives him actual or apparent authority over the other, or power to
 26 affect his interests. (McDaniel v. Gile (1991) 230 Cal.App.3d 363, 372).

1 Despite the generality of the test for outrageous conduct, case law has
 2 established some general guidelines. To be actionable, the conduct must be
 3 egregiously outside the realm of civilized conduct. (Yurick v. Superior Court,
 4 *supra*, 209 Cal.App.3d at 1129). Even conduct not objectively “extreme and
 5 outrageous” may become so where a defendant acts in the face of knowledge that a
 6 plaintiff is peculiarly susceptible to emotional distress, by virtue of age, or some
 7 physical or mental condition or idiosyncrasy. (Crouch v. Trinity Christian Center of
 8 Santa Ana, Inc. (2019) 39 Cal.App.5th 995, 1008).

9 Here, the acts complained of go far beyond insults, indignities, petty
 10 oppressions or other trivialities. What normal person would falsely tell a supposed
 11 friend and business partner that their husband was going to kill himself? Such a
 12 statement was not made to alert Meggie to a potential problem, or to offer help or a
 13 solution, but rather to inflict pain on Meggie out of malice.

14 Examples of decisions where a defendant's conduct was deemed sufficiently
 15 outrageous include: Sanchez–Corea v. Bank of America (1985) 38 Cal.3d 892, 909
 16 (bank failed to advise plaintiffs, who were small business operators, that the bank
 17 would give no further loans, bank misrepresented that further loans would be made
 18 if plaintiffs assigned all past, present and future accounts receivable to the bank,
 19 then refused further loans after plaintiffs did so, bank forced plaintiffs to execute
 20 excessive guarantees and security agreements, and bank employees publicly
 21 ridiculed plaintiffs, including the use of profanities); Alcorn v. Anbro Engineering,
 22 Inc. (1970) 2 Cal.3d 493, 496–497 (plaintiff employee, who was black, alleged he
 23 was fired in a despicable manner when his supervisor did so while shouting various
 24 racial epithets); Newby v. Alto Riviera Apartments, (1976) 60 C.A.3d 288,
 25 297–298 (When tenant got involved in rent protest, landlord shouted at her, ordered
 26 her out of her apartment within three days, threatened to throw her out personally,
 27 and said “We are going to handle this the way we do down South.”); (Golden v.
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1 Dungan (1971) 20 Cal.App.3d 295, 309-310)(process server banging on plaintiff's
2 door in the middle of the night)).

3 California's definition of extreme and outrageous conduct has been evaluated
4 based on comment d to section 46 of the Restatement Second of Torts. (Crouch v.
5 Trinity Christian Center of Santa Ana, *supra*, 39 C.A.5th at 1007). There are
6 examples of outrageous conduct given in comment d to section 46 of the
7 Restatement Second of Torts. Example 1 is: "As a practical joke, A falsely tells B
8 that her husband has been badly injured in an accident, and is in the hospital with
9 both legs broken. B suffers severe emotional distress. A is subject to liability to B
10 for her emotional distress. If it causes nervous shock and resulting illness, A is
11 subject to liability to B for her illness." (Crouch v. Trinity Christian Center of Santa
12 Ana, Inc., *supra*, at 1007–1008).

13 Here, the facts are closely aligned to Example 1 of the Restatement.² Rather
14 than just broken legs, however, Meggie was falsely told that her husband was going
15 to die soon because he was going to kill himself. The totality of Plaintiffs' conduct
16 was both socially unacceptable and would cause a reasonable person non-trivial
17 distress and mental anguish, which should not be endured. Moreover, a recent trend
18 in California jurisprudence has been to "require less severe distress in pleadings
19 and proof than is required in the Restatement." (Newby v. Alto Riviera
20 Apartments, *supra*, 60 C.A.3d at 298).

21 Assuming the accuracy of the allegations in the 11th claim for relief,
22 reasonable minds could certainly differ whether it is beyond the bounds of conduct
23 to be tolerated in civilized society for an adult, like Sarah Gagan, to tell Meggie, a
24 close friend, tenant and business partner, to whom Sarah owes fiduciary duties, that
25

26 ² Multiple Westlaw searches were conducted in California, all other states
27 and the 9th Circuit for a fact pattern similar to the one at bar here. Nothing could be
28 found.

1 Meggie’s husband went out of the country in order to kill himself.³ Whether such
 2 alleged behavior is sufficiently extreme as to constitute “outrageous” behavior is
 3 properly determined by the fact finder after trial or possibly after discovery in a
 4 motion for summary judgment. (See Angie M. v. Superior Court, *supra*, 37
 5 Cal.App.4th at 1226).

6 CONCLUSION

7 California courts agree that emotional distress “may consist of any highly
 8 unpleasant mental reaction, such as fright, grief, shame, humiliation,
 9 embarrassment, anger, chagrin, disappointment or worry.” (Hailey v. California
 10 Physicians' Service, 154 Cal.App.4th at 476.) Meggie has adequately pled facts
 11 surrounding both the actions of Plaintiffs in falsely telling her that Marc was going
 12 to kill himself as well as the physical manifestations of Meggie’s extreme emotional
 13 distress – migraine headaches which necessitate continuing

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22 ³ Meggie has pled in the FACC that she developed a close friend relationship
 23 with both of the Gagans, and also was asked to join Sarah Gagan 50-50 as partners
 24 in a new business enterprise called Glitter Guitars, which Meggie did in good faith.
 25 Meggie has not received a single bit of compensation for her work with Glitter
 26 Guitars. (Dkt 51 at 29-30, Paragraphs 286-287). Due to the special relationship
 27 between Sarah Gagan and Meggie, however, Sarah owes Meggie fiduciary duties
 28 which have been breached. Meggie seeks damages for such breaches in her 9th
 claim for relief for breach of fiduciary duty. (Dkt 51 at 45, Paragraphs 352-354).

1 treatment by a neurologist. For these reasons, Plaintiffs' motion to dismiss the 11th
2 claim for relief in the FACC should be denied.

3
4 Dated: February 10, 2023

ROEMER & HARNIK LLP

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7 By: Mary E. Gilstrap
8 Mary E. Gilstrap
9 Attorneys for Defendant and
10 Cross-Complainant Meggie Roy
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